

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

FILED BY sf D.C.  
05 OCT 24 AM 8:41  
THOMAS H. GOULD  
CLERK U.S. DISTRICT COURT  
W.D. OF TENNESSEE

EDDIE FAULKNER,

Plaintiff,

VS.

No. 05-1128-T/An

MILAN EXPRESS CO., INC. and  
CHRISTOPHER ADOMYTE,

Defendant.

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ORDER DENYING MOTION FOR LEAVE TO FILE COMPLAINT  
PARTIALLY *IN FORMA PAUPERIS* AND FOR FILING DATE  
OF MARCH 28, 2005  
AND

ORDER TO PAY FEE OR SUBMIT ADDITIONAL FINANCIAL INFORMATION

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Plaintiff Eddie Faulkner filed this personal injury action against defendants Milan Express Co., Inc. and Christopher Adomyte. Plaintiff also filed a "Motion for Leave to File Complaint Partially In Forma Pauperis and for Filing Date of March 28, 2005 Pursuant to Rule 3 of the Federal Rules of Civil Procedure." In that motion, plaintiff asserts that counsel attempted to file the complaint on March 28, 2005 by placing it in the night drop box along with \$150 for the civil filing fee. However, the next morning, counsel was informed by the Clerk's office that the filing fee had increased to \$250 and that the complaint would not be

stamped “filed” because of the failure to pay the entire fee.

Plaintiff resubmitted the complaint on May 4, 2005, along with the present motion and an affidavit, all of which were stamped “filed” by the Clerk on that date. In his affidavit, plaintiff stated that he would have the additional \$100 to pay the filing fee in full on either April 6, 2005 or April 16, 2005.<sup>1</sup> He further stated that the accident out of which this case arose occurred on March 26, 2004. In his motion, plaintiff requests that he be allowed to file the complaint partially *in forma pauperis* until he can tender the entire \$250 fee, and that the complaint be deemed as having been filed on March 28, 2005.

Several months have now passed since the filing of plaintiff’s motion and affidavit. Although plaintiff stated that he would have additional funds to pay the filing fee in April, none of the \$250 has been paid as of the date of this order. Therefore, plaintiff is hereby ORDERED to submit, within thirty days after the entry of this order, either the entire \$250 filing fee or an updated financial affidavit showing that he is unable to afford the required fee. The Clerk is directed to provide plaintiff with a copy of the non-prisoner *in forma pauperis* form along with this order.

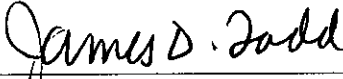

Plaintiff’s request for the Court to deem the complaint as having been filed on March 28, 2005 is DENIED. Plaintiff, in effect, asks the Court to rule that the complaint was filed within the statute of limitation. The Court will not issue an advisory opinion on that issue.

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<sup>1</sup> In the affidavit, plaintiff stated that he would receive his paycheck on April 6, 2005. However, he also stated that he would be able to pay the remainder of the filing fee “about April 16, 2005.” The “6” is typed, but someone appears to have handwritten a “1” in front of it.

If the timeliness of the action is raised in a motion to dismiss, the Court will consider the issue at that time.

IT IS SO ORDERED.

  
\_\_\_\_\_  
JAMES D. TODD  
UNITED STATES DISTRICT JUDGE  
  
  
\_\_\_\_\_  
DATE



## Notice of Distribution

This notice confirms a copy of the document docketed as number 4 in case 1:05-CV-01128 was distributed by fax, mail, or direct printing on October 25, 2005 to the parties listed.

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Wanda Abioto  
LAW OFFICE OF WANDA ABIOTO  
1555 Madison Ave.  
Memphis, TN 38104

Honorable James Todd  
US DISTRICT COURT